IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 34 of 1992
with
CROSS OBJECTION NO. 12 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THE CHIEF SECRETARY THE STATE OF GUJARAT GANDHINAGAR
Versus
M/S KOTHARI AND ASSOCIATES

Appearance:
1. First Appeal No. 34 of 1992
MR. PUJARI, A.G.P. for the appellant.
MR. P.M. THAKKAR, SR. COUNSEL, for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 30/07/2003

C.A.V. JUDGEMENT (Per : MR.JUSTICE K.M.MEHTA)

The State of Gujarat, appellant, original defendant, has filed this appeal under Section 96 of the Code of Civil Procedure, 1908 against judgement and decree dated 4.5.1991 passed by the Civil Judge (S.D.), Anand, in Civil Suit No. 22 of 1985 filed by M/s. Kothari and Associates, original plaintiff. The learned Judge by his impugned judgement was pleased to partly decree the suit of the plaintiff. The learned Judge was pleased to direct that the defendants do pay to the plaintiff Rs. 13,61,574.00 (Rupees thirteen lakh sixty one thousand five hundred seventy four) together with interest on the said amount at the rate of 12% per annum from 7.8.1983 till realisation of decretal amount.

2. The facts giving rise to this appeal are as under:

2.1 M/s. Kothari & Associates, original plaintiff (hereinafter referred to as "the plaintiff") is a registered partnership firm carrying on the business of Engineers and Contractors. The Executive Engineer, Anand, Irrigation Division, Anand, invited tenders publicly for the work of providing lining to main canal mile 36 to 46 between 36 M and 41.2 M Section I. The plaintiff submitted the tender form for the same. The State of Gujarat through Executive Engineer accepted tender of the plaintiff amounting to Rs. 33,71,213.91 ps. against the estimated cost of Rs. 29,51,737/-. Thereafter a regular agreement was entered into between the plaintiff in B2 form bearing agreement No. B2-1 of 1976-77 and the State Government. The said agreement has been produced at Exh. 234. One of the important conditions of the contract was Clause 45 which reads as under:

"Clause 45 - Condition to provide canal for carrying work of lining as order - The lining work to be done is in the existing canal from where the Kharif irrigation is being done. Probable period for kharif season is 15th June to 14th November. As such, the contractor will get normal working period of about 7 months from 15th November to 14th June next. Even during this period, the canal does not get dry, the contractor shall be liable to maintain the progress of work and the reason for not getting the canal dry, shall not be put forth for extension of time limit."

2.2 The State Government, thereafter, issued work order on 24.9.1976 to the plaintiff and the work was required to be completed within stipulated period of 18 months i.e. on or before 23.3.1978. (Exh. 45)

2.3 It is the case of the plaintiff that the contract creates certain mutual bilateral reciprocal contractual obligations inasmuch as certain reciprocal contractual obligations were required to be performed by the plaintiff and certain reciprocal contractual obligations were required to be performed by the Department.

2.4 It was the case of the plaintiff in the plaint before the trial court that as there was a delay in handing over the site to the plaintiff by the Government, the plaintiff could not complete the work within the stipulated time. Hence due to delay on the part of the Government the plaintiff had incurred other expenditure and therefore the plaintiff had filed suit for damages on various grounds and hence the plaintiff filed suit for damages. The details of the said suit are as under:

2.5 The first season begins from 15th November 1976 to 14th July, 1977. Ordinarily, the site would be working for 213 days, if the same is made available in time. However, the site was made available on 15th January, 1977.

2.6 It was further submitted that for construction of dam certain materials were to be supplied by the Government. The plaintiff stated that Material Supply Register produced on record which is described as USR Statement which at page 5 shows that the first issue of cement was made on 31.1.1977 of 2.50 M.T. However, the work could not be commenced because the site was handed over as late as on 15.1.1977 and the cement was issued for the first time on 31.1.1977. In view of the same, the working days made available to the plaintiff were 135 days being the period between 10th to 31st January, 1977 and 14th June, 1977 as against 213 days which would have been normally available. Thus, on account of no fault on the part of the plaintiff and on account of late handing over of the site, late supply of cement, the plaintiff could work only 135 days as against 213 days. Thus, there was a loss of 78 working days.

2.7 As regards second season, it is submitted that the period for this season is 15th November, 1977 to 23rd March, 1978. In this case 129 working days were

available in the second season. However, it has been stated that the site was handed over on 15.3.1978 i.e. just couple of days before the second season was to end on 23.3.1978 and since water was flowing, which took 15 days to dry. Thus, it became clear that there was not a single day available for working in this season as per the contract period. Thus, there was no default on the part of the plaintiff for not working in the second season.

2.8 It was further stated that in the second season that after extension of contract period, the second season begins from 24.3.1978 to 14.6.1978. In that case the extension was granted by letter at Exh. 249 dated 15.3.1978 only. However, the plaintiff could not work fully because of late handing over of the site as well as non-availability of cement, without any contributory default on the part of the plaintiff.

2.9 The plaintiff stated that the period of third season was between 15.11.1978 to 14.6.1979. In that case also the site was handed over on 15.3.1979 and after drying period, work commenced on 31.3.1979 and 76 working days were available in the said season.

2.10 So far as the fourth season is concerned, the said seasons begins from 15.11.1979 to 29.6.1980. The site was made available on 15.3.1980 instead of 15.11.1979 i.e. almost after making allowance for drying period, the work started on 1.4.1980. Thus, without any default on the part of the plaintiff, the plaintiff could complete the work on 20.6.1980 i.e. only in 76 days' working.

2.11 In view of the aforesaid aspect, it was submitted on behalf of the plaintiff that 342 working days would have been available if one has to consider the contract period and the site and cement were made available in time. However, in spite of delay in handing over the site and cement, and non-availability of cement, the work was completed by the plaintiff in 288 working days which clearly proved the fact that there was no laxity on the part of the plaintiff and on the contrary, time less than what the plaintiff was entitled to, was utilised for by the plaintiff to the satisfaction of the defendant.

2.12 In support of the aforesaid contentions the learned counsel for the plaintiff has relied on the following documents.

(i) The plaintiff has addressed a letter dated

28.9.1976 to the Executive Engineer (Exh. 256) in which the plaintiff requested that only the date of handing over the site may be taken for completion of the contract. In the said letter the plaintiff complained that the site for working has not been handed over to him. The plaintiff also relied on the letter dated 21.12.1976 addressed by the Deputy Engineer to the plaintiff (Exh. 47) in which the office of the defendant had admitted that the main canal has been closed from 1.1.1977 and the site will be made available to the plaintiff thereafter (at Exh. 47). The plaintiff thereafter also addressed a letter dated 13.1.1977 to the Deputy Engineer (at Exh. 268) in which the plaintiff complained of late handing over of the site. The plaintiff addressed another letter (at Exh. 257) dated 16.7.1977 to the Executive Engineer in which also it was stated that for the late handing over of the site, the plaintiff could not be able to complete the work. The plaintiff also relied on a letter (at Exh. 258) dated 18.7.1977 addressed by the plaintiff to the Executive Engineer against late handing over of the site. The plaintiff addressed a letter dated 16.11.1977 (at Exh. 265) to the Superintending Engineer in which it was stated that due to late handing over of the site and late drying of the canal, the plaintiff shall be put to a lot of inconvenience and heavy monetary loss and it would not be possible for the plaintiff to complete the work in time. The plaintiff also relied on a letter dated 28.11.1977 (Exh. 48) addressed by the Superintending Engineer to the plaintiff in which it was admitted that canal is closed upto 30.11.1977 for the casual watering for Rabi season as per the irrigation programme approved by the Government.

(ii) The plaintiff also addressed another letter dated 6.1.1978 (at Exh. 241) to the Superintending Engineer in which the plaintiff requested that the government shall have to grant extension and shall have to pay heavy monetary loss made to the plaintiff for delaying the work for the Government reasons only. The Executive Engineer by his letter dated 16.2.1978 addressed to the plaintiff (at Exh. 70) informed that the plaintiff's request for extension of time is under consideration. The plaintiff has also relied on a letter dated 16.2.1978 (at Exh. 238)

addressed by the Executive Engineer to the Superintending Engineer in which the authority has recorded reasons as to why extension period was granted to the plaintiff. The plaintiff also relied on office order dated 26.2.1978 (at Exh. 249) wherein extension of time limit has been granted by the Superintending Engineer. The authority has granted time limit for the period from 24.3.1978 to 7.8.1978. The plaintiff has also addressed a letter dated 13.3.1978 (at Exh. 259) to the Executive Engineer in which the plaintiff has stated that because the Government was not able to supply cement in sufficient quantity and the Government was not able to supply Government controlled item like coal, the plaintiff requested to give sufficient extension of time limit and also to pay reasonable and just compensation to the plaintiff. The plaintiff has also relied on the communication and the telegram dated 17.3.1978 (at Exh. 260) addressed by the plaintiff to the Executive Engineer wherein the plaintiff requested to supply cement as work of the plaintiff has started. The plaintiff also relied on memorandum dated 6.4.1978 (at Exh. 239) in which second extension of work was granted to the plaintiff on the ground that there was a delay in handing over the site after Khari Season of 1976 and 1977 for carrying out lining work. The plaintiff also relied on the letter dated 19.4.1978 (at Exh. 240) of the Executive Engineer addressed to the plaintiff in which it is stated that extension of time limit is granted to the plaintiff on the ground that delay in handing over the site after Kharif season of 1976 and 1977 for carrying out lining work. The plaintiff has further relied on letter dated 1.9.1978 (at Exh. 261) addressed by the plaintiff to the Executive Engineer. The plaintiff also relied on letter (at Exh. 52) dated 18.9.1978 addressed by the Executive Engineer to the plaintiff. The plaintiff also relied on letter dated 27.2.1979 addressed by the plaintiff to the Executive Engineer (at Exh. 242) requesting to extend time limit upto 31.7.1979. The plaintiff also relied on the detailed reasons for extension of time limit in the letter dated 30.1.1980 which has been addressed by the Executive Engineer to the Additional Engineer which is produced at Exh. 245 where the Government itself has considered that there was a delay due to not handing over of the

site to the plaintiff.

(iii) It may be noted that the Government has decided to grant extension of time limit to the plaintiff from 1.8.1979 till the date of completion on the ground that the plaintiff is liable to pay compensation of Rs. 5/- per day from 1.8.1979 till the date of completion of the work is recommended. The plaintiff also relied on letter dated 8.2.1980 addressed by the Additional Engineer to the Chief Engineer where the Department itself has considered that there was a delay in handing over the site and extension has been granted to the plaintiff. The letter is produced at page 501 of (Exh. 238).

(iv) It appears that the plaintiff has completed the work on 26.6.1980. The plaintiff has informed the defendant about the same by the letter dated 26.6.1980 which has been produced at Exh. 238. The plaintiff has also relied on the communication from the Chief Engineer to the Superintending Engineer dated 21.4.1981 (at Exh. 243). The plaintiff has also relied on letter addressed by the Chief Engineer to the Superintending Engineer dated 29.6.1981 which has been produced at Exh. 238 at pages 747 in which the Government has also recorded reasons for delay in handing over the site to the plaintiff. The plaintiff has also relied on letter dated 13.10.1981 addressed by the Executive Engineer to the plaintiff (at Exh. 244) where the Government has considered that there was a delay in work by the plaintiff but the Government is not liable to pay compensation in this regard. The plaintiff also relied on the communication dated 16.10.1981 (at Exh. 248) addressed by the Executive Engineer to the plaintiff where penalty of Rs. 5/- per day has been imposed by the Additional Engineer effective from 14.5.1980. The plaintiff has also relied on letter dated 5.3.1982 (at Exh. 262) addressed to the Executive Engineer wherein various claims for damages have been stated. The details of the claims will be stated hereafter.

(v) In view of the aforesaid submissions the plaintiff submitted that the work was completed on 20.6.1980. Final bill was accepted under protest on 1.1.1982 and security deposit was

refunded by Government to the plaintiff on 27.1.1982. The plaintiff had addressed a letter dated 5.3.1982 (Exh. 262) claiming damages and also interest at the rate of 18% per annum from the date of completion of work i.e. 20.6.1980. The plaintiff thereafter addressed a statutory notice under Section 80 of the C.P.C. dated 7.8.1983 to the defendant claiming damages. In the said notice the plaintiff claimed interest from the due date i.e. 5.3.1982, the date on which he addressed a letter at Exh. 262. The plaintiff filed suit on 25.1.1985 and therefore claimed that the suit is within the period of limitation.

2.13 The details of claims are as under:-

Claim No. 1: Amounting to Rs. 1,99,681/- on account of price escalation in labour due to prolonging of the work:

2.13A The plaintiff stated that the work was prolonged abnormally. The work was required to be completed within 18 months i.e. on or before 23.3.1978 but the work was actually completed on 20.6.1980. Thus, there was a delay of 27 months. The delayed performance was due to preventions partly and/or fully created by the department for the reasons that there was delay in handing over the site of canal i.e. the department gave the line out very late in the initial stage and the department intentionally did not handover the site in time to keep the canal running for Rabi crop. The Department failed and neglected to supply coal which was only available from nationalised quarries in time and there was heavy shortage of diesel. There was heavy interruption of electricity supply. The Department itself is to be blamed for delay and therefore the plaintiff claimed damages on this account.

Claim No. 2: Amounting to Rs. 43,712.80 ps. on account of price escalation in fuel lubricants etc.

2.13B The plaintiff has made a claim on account of price escalation in fuel lubricants. It was submitted that there was heavy delay due to the departmental reasons only and hence the compensation due to rise in price of fuel, lubricants etc. was demanded.

Claim No. 3: Amounting to Rs. 4,68,750/- on account of overstay of capital and machinery.

2.13C It was submitted that due to breach of the contract made by the department in not handing over the site in time, the plaintiff claimed damages on account of overstay of capital and machineries etc.

Claim No. 4: Amounting to Rs. 4,64,868.72 ps. on account of overhead i.e. staff, kitchen, office and site office maintaining etc.

2.13D It was submitted that due to delayed performance the department committed breach of contract and there was overstay of overheads for 27 months. The plaintiff therefore suffered damages to the tune of Rs. 4,64,868.72 ps and claimed damages of the said amount.

Claim No. 5: Amounting to Rs. 73,695/- on account of interest on security deposit, final bill, bank commission charges etc.

2.13E The plaintiff stated that due to prolonging of the work by 27 months, there was delayed performance. The plaintiff therefore claimed amount of Rs. 73,695/- on account of interest on security deposit, final bill, bank commission charges etc.

Claim No. 6: Amounting to Rs. 1,625/- on account of wrongful recovery towards penalty.

2.13F It was stated that delayed performance was due to breach committed by the Department. The plaintiff therefore claimed that Rs. 1,625/- on account of wrongful recovery towards penalty may be refunded to the plaintiff.

Claim No. 7: Amounting to Rs. 61,168/- on account of excess quantity above the tender:

2.13G It was stated that the plaintiff has claimed Rs. 61,168/- on account of excess quantity above the tender.

Claim No. 8: Amounting to Rs. 39,798.75 ps. on account of wrongful deduction of quantity from item No. 2.

2.13H The plaintiff has claimed the said amount on account of wrongful deduction of quantity from item No. 2.

Claim No. 9: Amounting to Rs. 1,22,490/- on account of change in item No. 4 instead of brick lining.

2.13-I The plaintiff has made a claim of Rs. 1,22,490/on account of change in item No. 4, i.e. cement lining instead of brick lining.

Claim No. 10: Amounting to Rs. 12,351.75 ps. on account of reduced rate in Schedule "B" items and 18% interest on it from due date till its payment.

2.13J It was submitted that the plaintiff has carried out the work according to the drawings, designs, specifications and the instructions of Engineer in-charge of the Department but the plaintiff was paid the amount at reduced rate. Therefore, the plaintiff has made the said amount on this account.

Claim No. 11: Amounting to Rs. 11,417.20 ps. on account of wrongful recovery and difference in rate actually deducted in Schedule A.

2.13K It was submitted that as per Schedule A of the tender the plaintiff was to be issued cement at fixed price. The department has paid the amount at deducted rate. Therefore, the plaintiff has made the claim of Rs. 11,417.20 ps. on account of wrongful recovery.

Claim No. 12: Amounting to Rs. 11,632.30 ps. on account of wrongful recovery of additional cement bags.

2.13L It was submitted that the Department paid reduced rate than the rate at which the plaintiff has made his claim. The plaintiff therefore claimed Rs. 11,632.30 on account of wrongful recovery of the impugned amount.

Claim No. 13: Amounting to Rs. 12,40,702/- on account of interest on the above claims from the date of completion till the date of filing of the suit.

2.13M As far as claim No. 13 amounting to Rs. 12,46,702/- is concerned, the plaintiff has claimed the said amount on account of interest on all the items which I have stated above, from the date of completion of the work i.e. 20.6.1980 till the date of filing of the suit i.e. 26.1.1985. It is submitted that the above amount is required to be paid to the plaintiff when the

plaintiff had completed the work i.e. on 20.6.1980 but the Department has not paid the amount in time. Thus, the plaintiff had suffered damages on the above amount by loss of interest at the rate of 15% per annum. The plaintiff stated that all these claims 1 to 11 comes to about Rs. 15,11,154.52 ps. Thus, the plaintiff is entitled to Rs. 12,46,702/- by way of damages i.e. 5% interest from the date of completion till the filing of this suit.

2.14 In support of the aforesaid contention the plaintiff has examined one Praful M. Gandhi, partner, at Exh. 43. The oral evidence on behalf of the plaintiff also supports the case of the plaintiff, namely, that there was default on the part of the Government regarding late handing over of the site of which the plaintiff had no contribution in any way. The plaintiff's evidence also supports the case of the plaintiff that the Material Supplied Register showed that there was not enough supply of coal as well as diesel to the plaintiff by the Department. The plaintiff's evidence supports the case of the plaintiff that the site was handed over to the plaintiff on 15.3.1978. So the plaintiff could not do any work between 15.3.1978 to 23.3.1978 which has been the period of second season. The plaintiff's evidence supports that the plaintiff could do work only during the period of extension in the second season. Regarding third and fourth season also oral evidence of the plaintiff supports the case of the plaintiff.

2.15 Substantial part of evidence of the plaintiff regarding delay has not been challenged in cross-examaination. The plaintiff's oral evidence has also supported various claims of damages which have been stated by the plaintiff in the plaint.

2.16 The defendant filed written statement at Exh. 24 and denied the contentions raised by the plaintiff. It was the main contention of the defendant that though there was a delay but in view of clause 45 of the Contract the plaintiff is entitled to any damages. It was the case of the Department relying on the same document that the plaintiff did not employ proper arrangement and sufficient material and machinery and therefore there was delay in completing the work and for that purpose the Department is not to be blamed and therefore the plaintiff is not entitled to any damages in this behalf. It was also submitted that there was delay on the part of the Government in handing over the site. It was the case of the Department that during that period the plaintiff could have utilised that time in other

preparation and in view of Clause 45 the plaintiff is barred from claiming any damages. According to the department, they have supplied sufficient quantity of coal and diesel and there was no negligence on the part of the department.

2.17 The defendant also contended that several running bills were given to the department and without making any grievance the same were signed by them accepting the rate therein. While accepting the running bill the plaintiff did not make any grievance about extra rate for the so-called expenditure and price escalation and therefore the plaintiff is not entitled for damages.

2.18 In this connection, the defendant has also relied on letter dated 7.1.1977 addressed by the Deputy Engineer to the plaintiff at Exh. 238 (page 53). The defendant also relied on letter dated 11.1.1977 addressed by the Deputy Engineer at page 41 (Exh. 238). The defendant has also relied on letter dated 24.2.1977 addressed by the Deputy Engineer to the plaintiff at page 59 (Exh. 238). The defendant has also relied on letter dated 24.2.1977 addressed by the Deputy Engineer to the Executive Engineer on page No. 61 at Exh. 238. The defendant has also relied on letter dated 12.4.1978 addressed by the Superintending Engineer to the Executive Engineer on page No. 177 at Exh. 238, letter dated 16.2.1979 (page 255 - Exh. 238) addressed by Executive Engineer to the plaintiff regarding completion of the work. The defendant also relied on letter dated 12.12.1979 from the Executive Engineer to the plaintiff (page 413 - Exh. 238) regarding necessary arrangement for cement material and machinery. Letter dated 7.6.1980 addressed by Executive Engineer to the plaintiff (page 517 - Exh. 238) regarding completion of the work. Letter dated 13.3.1980 letter addressed by the Executive Engineer to the plaintiff (page 503 - Exh. 238) regarding completion of the work. The defendant has also relied on the statement by which goods were given to the plaintiff and the rates at which the work which has been carried out by the plaintiff has been registered.

2.19 The defendant has also relied on letter dated 13.1.1977 addressed by the plaintiff to the Deputy Executive Engineer at Exh. 268, letter dated 28.11.1977 letter from the Superintending Engineer to the plaintiff at Exh. 48, letter dated 6.12.1977 letter from the Executive Engineer to the plaintiff at Exh. 49, letter dated 21.3.1978 letter from the Executive Engineer to the plaintiff produced at Exh. 50.

2.20 It may be noted that the defendant has examined one Mahendrasinh Fulsinh Solanki at Exh. 274. It may be noted that Mr. Mahendrasinh Fulsinh Solanki was not working the contract work. He was not given charge of the work and he was not now actively associated with the work of the Government in connection with the plaintiff's work. He had given evidence only on the basis of the record and he had no personal knowledge in this regard. However, the defendant in examination-in-chief has admitted that the site was handed over on 10.1.1977, cement was made available on 31.1.1977 as per the admission made by the defendant in para 16 of the deposition at page 161C and he has also admitted that 12,00,000 bricks were lying at the site since 21.1.1977. The defendant's witness also admitted that cement was only made available during the entire season. He has further stated in the entire second season (i.e. unextended and extended) only 4.5 M.T. of cement was made available which is less than a day's requirement.

3. In view of the aforesaid documentary and oral evidence, the learned Judge framed issue at Exh. 27. After considering the oral and documentary evidence the learned Judge came to the following conclusion:

TRIAL COURT'S FINDINGS:

3.1 The learned Judge held that the plaintiff also proved that the plaintiff could not complete the work within stipulated time on account of delay, hindrances and breaches committed by the defendant and therefore, the work was required to be executed in prolong period and was ultimately completed on 20.6.1980. The learned judge further held that the plaintiff proved that the plaintiff has accepted final bill under protest. Regarding delay, on page 41 of the judgement the learned Judge has observed as under:

S.No.	Working days as per contract	Work days made available upto 20.6.80	Remarks on the basis of evi. at ex. 43
1(a)	15.11.76 to 14.6.77 = 213	135 days	site not made available upto 1.1.77
(b)	15.6.77 to 14.11.77 = Nil	Nil days Nil days	Because of rabi seasons as per condition No. 45, Exh. 234, page 39.

2(a)	15.11.77 to 23.3.78 = 129 days	Nil days		site note made available upto 25.3.78

As per contract 342 days

working days in extended period from 24.3.78 to 20.6.80

(b)	24.3.78 to 14.6.78	Nil	80 days	site handed on 25.3.78
3(a)	15.11.78 to 14.6.79	Nil	76 days	canal made available on 31.3.79
4.	15.11.79 to 29.6.80		76 days	canal made available on 1.4.80
			---	
			367 days	

3.2 The learned judge rejected the contention of the defendant that by the general condition No. 11, 15 and 15A of the accepted tender, the plaintiff is not entitled for the interest. The learned Judge did not accept the contention of the defendant that the claims put forward are subsequent to the final bill and hence not payable.

3.3 As regards various claims the learned Judge has held that the plaintiff completed the work well in advance than that required days to complete the work and the plaintiff has not committed breach of terms and conditions of the contract and solely on account of the defendant's reasons in which the work in question was delayed and the work was required to be executed from 24.3.78 to 20.6.80. The learned Judge has observed that Section 73 of the Indian Contract Act, clearly states that "compensation for any loss or damage caused by breach of contract" - when the contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the

breach. The learned Judge therefore held that in view of Section 73 of the Indian Contract Act which clearly stipulates that if the breach has been committed by any of the party then in that circumstances any party who has suffered any loss or damage on account of breach of other party, is required to be compensated and therefore the question of sustainability of legal injuries did not arise. In view of the aforesaid finding, as regards claim No. 1, the learned Judge has held that the plaintiff is required to be compensated for the loss suffered by him during the prolonged period. The amount as claimed by the plaintiff has remained uncontroverted and therefore the plaintiff is entitled to a sum of Rs. 1,99,681.08 ps.

3.4 As regards claim No. 2, amounting to Rs. 43,712.80 ps. on account of price escalation and lubricants due to prolongation of the work, the said claim has remained uncontroverted. Therefore, the plaintiff is entitled for a sum of Rs. 43,712.80 ps.

3.5 As regards claim No. 3 amounting to Rs. 4,68,750/- on account of overstay of capital and machinery, on the basis of the evidence produced by the plaintiff both oral and documentary the learned Judge has held that the plaintiff is entitled to a sum of Rs. 4,68,750/- from the defendant.

3.6 So far as claim No. 4 amounting to Rs. 4,64,868.72 ps. on account of overhead is concerned, it was held by the learned Judge that the plaintiff suffered loss for which evidence was produced by the plaintiff and the said evidence has remained uncontroverted by the defendant. Therefore, the plaintiff is entitled to Rs. 4,64,868.72 ps.

3.7 As regards claim No. 5 amounting to Rs. 73,695/on account of interest on security deposit, final bill, bank commission etc., the learned Judge has held that the the plaintiff has failed to prove this claim and therefore the plaintiff is not entitled to the same. The learned Judge therefore rejected the said claim.

3.8 As far as claim No. 6 amounting to Rs. 1,625/relating to wrongful recovery towards penalty is concerned, the learned Judge has held that the defendant has failed to prove any actual loss suffered to them and the plaintiff is entitled to a sum of Rs. 1,625/- on account of wrongful recovery towards penalty.

3.9 As regards claim No. 7 amounting to Rs.

61,168/on account of excess quantities above tender, the learned Judge has rejected the said claim as the contractor has not filed appeal against the said part, hence the said claim is not dealt with.

3.10 So far as claim No. 8 amounting to Rs. 39,798.75 ps. relating to wrongful deduction of the quantity from item No. 2 is concerned, the learned Judge has held that the plaintiff is entitled to Rs. 25,045.40 ps. as on account of wrongful deduction of the quantity from item No. 2.

3.11 As far as claim No. 9 is concerned namely Rs. 1,22,490/- on account of change in item No. 4, the learned Judge has held that as the defendant has taken the benefits of the work and for the benefit taken the department has not reimbursed the plaintiff as per the prevailing market rate or actual cost incurred, the plaintiff is entitled to Rs. 1,22,490/- from the defendant.

3.12 As regards claim No. 10 amounting to Rs. 12,351.75 ps. on account of reduced rate in Schedule B item, the learned Judge has held that the plaintiff is entitled for Rs. 12,351.75 ps. from the defendant for the illegal deduction of the amount.

3.13 As regards claim No. 11 amounting to Rs. 11,417.20 ps. on account of wrongful recovery and difference in rate actually deducted in Schedule A, the learned Judge has held that the plaintiff is entitled to the said amount from the defendant.

3.14 So far as claim No. 12 amounting to Rs. 11,632.30ps. is concerned, the learned Judge has held that the plaintiff is entitled to the said amount from the defendant on the ground of wrongful recovery of additional cement bags.

3.15 As far as claim No. 13 amounting to Rs. 12,46,702/- on account of interest on claim Nos. 1 to 12 is concerned, it is submitted that according to the plaintiff they have completed the said work on 20.6.1980 but the Department did not pay the above claims to the plaintiff and therefore the plaintiff has suffered damages on the above amount, amounting to Rs. 15,11,154.52 ps. Hence the plaintiff is entitled to interest from 20.6.1980 till the date of filing of the suit i.e. on 26.1.1985. The plaintiff claimed interest at the rate of 18% per annum from 20.6.1980 to 25.1.1985 on the sum of Rs. 15,11,154.52 ps. which comes to Rs.

12,46,702/-. The learned Judge has held that though the plaintiff has submitted the claim on 5.3.1982, the plaintiff had given a statutory notice to the defendant making the claim of interest from 7.8.1983 till the date of institution of the suit. Thus the learned Judge has granted interest from 7.8.1983 (date of statutory notice) to the date of filing of the suit i.e. 25.11.1985.

3.16 As stated above, the defendant has filed the present appeal challenging the aforesaid judgement and decree of the learned trial judge. However, the original plaintiff, respondent herein, has filed counter claim against the order and the said counter claim is on account of interest awarded from statutory notice Exh. 57 instead of awarding interest from the date of written demand of the suit claim vide letter Exh. 262 dated 5.3.1982 wherein interest has been claimed from the due date i.e. from 5.3.1982. It is the claim of the plaintiff that interest has been claimed from due date and even in notice under Section 80 of the C.P.C. which is at Exh. 57, the plaintiff has claimed interest from due date and thereby the plaintiff is entitled to interest from the date demanded in the notice and on construing the due date, the date will be 20.6.1980 when the work was completed. Thus in view of the decision of the Hon'ble Supreme Court reported in AIR 1997 SC 1324 interest is payable from 20.6.1980. However, in the Cross Objection the plaintiff has restricted the claim of interest from 5.3.1982 till 7.8.1983 which amounted to Rs. 2,32,773.19 ps.

CONTENTION OF THE LEARNED COUNSEL FOR THE APPELLANT - MR. L.R. PUJARI.

4. The learned counsel for the defendant - (appellant herein) has submitted that as per the original contract agreement, work is to be completed within 18 months starting from 24.9.1976 and to be completed on or before 23.3.1978. As per clause 45 of the general condition site is available for period starting from 15th November to 14th June. Even during this period if canal does not dry the contractor shall be liable to maintain the progress of work and reason that not getting the canal dried shall not be put forth for extension of time limit.

4.1 During the period of 18 months, that is, in the first season the contractor would get probable period of 7 months from 15th November, 1976 to 14th June, 1977.

4.2 In the second season from 15th November 197 to 23rd March, 1978 contractor would get about four months probable period for work.

4.3 He submitted that the site was handed over to the plaintiff on 15.1.1977. It was submitted that even though the site was handed over to the plaintiff on 1.1.1977, the work was started from 12.1.1977. The plaintiff must have started the work from the date of handing over the site. According to him, cement was supplied in sufficient quantity from 27.6.1977. According to him the contractor was negligent in completing the work and the plaintiff did not keep the progress as per the terms of the contract. According to him the contractor did not use sufficient man, material and machinery to maintain the progress of the work. He has relied on some of the documentary and oral evidence on behalf of the defendant in this regard. He has also relied on various running bills which have been submitted from time to time which showed that the plaintiff did not object initially to the payment and also the rate of work. He submitted that from the running bills it appears that the plaintiff has completed work of only Rs. 11,58,406/- out of total work of Rs. 33,71,213/-. This shows that the progress made by the plaintiff was very slow. He submitted that the learned Judge has not appreciated documentary and oral evidence. In view of the same the decree passed by the learned Judge is required to be quashed.

UKAI FORMULA:

4.4 As regards Ukai Formula submitted by the plaintiff, the learned A.G.P. stated that the said formula was concerned with Ukai work and it has no relevance with the present work and it cannot be considered as a formula accepted by the Government for the present work.

4.5 He also submitted that the plaintiff has relied on the books of accounts and the certificate issued by the Chartered Accountant. However, he submitted that the certificate issued by the Chartered Accountant shows that it is certified on the basis of statement prepared by the plaintiff and the same is true extracts of books of accounts. He submitted that it does not say that the same is regularly kept in the course of business. The entries of books of accounts shall not alone be sufficient evidence to charge any person with liability, in view of the provisions contained in Section 34 of the Evidence Act.

4.6 He has also challenged the panchnama produced at Exh. 60. As regards interest, according to him the plaintiff is not entitled to any interest.

LIMITATION:

4.7 The learned counsel for the plaintiff has submitted that in this case the work was completed on 20.6.1980. Final bill was accepted on 1.1.1982. Vide letter dated 5.1.1982 the Executive Engineer asked the plaintiff to submit their claim within seven days. However, without doing so they filed suit for appointment of arbitrator and ultimately the order appointing arbitrator was set aside by this Court and suit was filed on 26.1.1985. Therefore, in view of the provisions contained in Section 3 of the Limitation Act, 1963, the suit is not maintainable. In view of the same, the decree and judgement given by the learned Judge is required to be quashed and set aside.

4.7A In support of the aforesaid contention the learned counsel for the appellant has relied on the Division Bench judgement of this Court in the case of GUJARAT HOUSING BOARD VS. HARILAL JETHALAL reported in AIR 2001 GUJARAT 259 particularly paragraph Nos. 10.1 and 10.2 which read thus:

"10.1 The final bill was submitted by the respondent on 18.9.1976. The respondent's final bill was already paid before 29.9.1976, as stated in the letter exh. 40 seeking refund of the security deposit. The remaining half of the security deposit was received by the respondent as per the acknowledgement at exh. 42, which contained the discharge clause that the payment was received in full and final settlement of all claim for the work and against the said contract. Thus, whatever payment was due under the final bill was already made and nothing remained due to be paid to the respondent under the terms and conditions of the contract. The work was completed and handed over on 31.3.1976, as stated in the respondent's letter dated 5.7.1976, as stated in the respondent's letter dated 5.7.1976 at exh. 38, therefore right to sue had already accrued in any event from the date when the final bill was accepted i.e. before 29.9.1976 on the authority of the decision of this Court in case of State of Gujarat Vs. Shirinbai Pirojshah

Wadia (1976(17) Guj. LR 638) (supra). The suit was therefore required to be filed in 1979 before the expiry of three years the date when the right to sue accrued.

10.2 Further more, the respondent had claimed on upward revision by letters at exh. 89 and exh. 90 dated 27.7.1974 and 23.1.1975 respectively, and the respondent was paid Rs. 20,447.00 as ad hoc payment on 17.1.1977, as stated in the letter Exh. 49 dated 20.8.1977 for price escalation for the civil work for the period of 1.4.1974 to 31.12.1974. In fact, recovery of Rs. 358.81 for the ad hoc relief overpaid was being effected as per letter dated 29.11.1977. Therefore, so far as any claim to additional payment of higher rate not stipulated in the contract was concerned, that stood negatived beyond the amount of the ad hoc payment and the relief, if any, seeking any further payment not due under the contract could have been claimed in a suit filed within three years of the payment for price escalation. The respondent's partner in statement at Exh. 51 recorded on 11.7.1978 had admitted that his claim in letter (Exh. 90) dated 23.1.75 was negatived by the Housing Commissioner. Thus, even if the right to sue is stretched till the date when the price escalation was paid to the respondent by cheque dated 17.1.1977, the suit filed on 18.12.1981 was clearly time barred."

CONTENTION OF THE LEARNED COUNSEL FOR THE PLAINTIFF - MR. P.M. THAKKAR, SR. COUNSEL

5. The learned counsel for the plaintiff has reiterated and relied on the documentary and oral evidence of the plaintiff in support of the claims. He has tried to support the judgement and decree of the learned Judge in this behalf. Over and above, the learned counsel for the plaintiff has stated that the contention of the learned counsel for the appellant that if the canal does not dry by 15th November of respective year, the contractor shall be liable to maintain progress of the work but in the present case the plaintiff M/s. Kothari & Associates received the canal much in later time and flow of water had continued for the period after 15th November of each and every season and extension is claimed on account of water running in the canal. He submitted that once the water running in the canal after 15th November the Government cannot take advantage of

clause 45. Clause 45 only postulates that canal has been handed over on 15th November of respective year and at that time the water was not flowing in the canal. Once the water is flowing after 15th November....in the month of March the Government cannot take advantage of clause 45. Clause 45 never contemplated this type of situation. He submitted that during the period of 18 months in the first season the site was to be handed over on 15.11.1976 whereas the Government handed over the site on 15.1.1977. Thus, out of 213 days, 129 working days were available to the plaintiff. He submitted that the defendant's witness in his oral examination at Exh. 274, page 147 in his examination-in-chief has stated that the site was handed over on 10.1.1977 and started working on 12.1.1977. Looking to the evidence on record it is clear that the work pertains to brick canal lining and which work without supply of Schedule A material by the Department as per agreement at exh. 234 cannot be commenced, only preliminary work like cleaning of site and earthwork could be done but not more than 60 to 70 ft. because dressing work done will get spoiled and hence immediately after doing dressing, brick lining work is to be started which could only be done with cement, and the cement was supplied for the first time on 31.1.197 which is evident from the letter dated 31.1.1977. In view of the same it was submitted that the work in first season could only be commenced from 31.1.197.

5.1 The learned counsel for the plaintiff has further submitted that in the oral evidence of defendant's witness at page 147, para 2, the defendant's witness has stated that the work continued upto 20th July, 1977 but in fact the said witness in para 14 during his cross examination has admitted that he has no personal knowledge. Thus, the said evidence is required to be corroborated with the documentary evidence but none of the documentary evidence showed that the work continued upto 20.7.1977. In fact, page 4 of the defendant-appellant's argument mentioned regarding the period upto 20.6.1977 as per measurement dated 20.6.1977 whereby the documentary evidence showed that the work at the most continued up to 20.6.1977. It was further submitted that during the first working season cement supplied was 697 M.T. and looking to the plaintiff's oral evidence the plaintiff required 5.067 M.T. per day which evidence is not disputed. Now dividing 697 M.T. of cement by 5.067 M.T., the total number of days the plaintiff can do the work is 137 days. The learned counsel for the plaintiff further submitted that looking to the cross-examination of the appellant's witness Exh. 274, (page 161 of the paper book of the appellant)

wherein the appellant's witness has admitted that daily 64 fts. average lining work is to be done. Thus, the appellant's contention of 200 fts. or 75 fts. is not correct.

5.2 The learned counsel submitted that from the above facts, it is clear that the site was handed over on 10.1.1977 (stoppage of water flow in canal) and cement was made available on 31.1.1977. Thus, it will be clear that the work after performance of the obligation by the defendant/appellant in entirety the plaintiff were in a position to commence from 31.1.1977 and the work could continue only upto 20.6.1977 and cement quantity based on requirement was only available for 137 days. The plaintiff has mentioned working period 135 days whereas looking to overall evidence at the most it could be said that the work was done for the period 137 days. Therefore, the defendant/appellant's contentions are not correct and are also without proof of any documentary or oral evidence.

5.3 The learned counsel further submitted that the defendant/appellant's witness in his oral evidence at Exh. 274 (on page 159 of the paper book of the appellant) has mentioned clearly that the line out was given on 15.3.1978.

5.4 The learned counsel further submitted that in the second working season i.e. from 15.11.1977 till 23.3.1978 and from 24.3.1978 till 14.6.1978, the evidence clearly showed that the cement was made available only 4.5 M.T. which is admitted by the appellant's witness at page 159, para 15.

5.5 Thus it is clear that because of non-supply of cement in second working season, the plaintiff could not carry out the work at all. No working days were available for doing the work in the said second season. Thus, there are nil working days.

5.6 In view of foregoing para shown in 1st and 2nd working season are only 137 days instead of 342 days to be made available (1st working season 213 working days and in 2nd working season 129 days, totaling to 342 days).

5.7 It was further submitted that regarding second working season for the period 15.11.1977 to 15.6.1978 4.5 M.T. cement was made available and also gave evidence that without cement no work of canal can be done.

5.8 It was further submitted that the work was completed on 20.6.1980 and the extension was approved though application not made for the period from 1.8.1979 to 20.6.1980 and for the period from 1.4.1979 to 31.7.1979, the extension was granted which is clear from exh. 243. The extension granted with levy of compensation was a token compensation as such, token compensation was not on account of plaintiff's default but only because application for extension was not made. It was further submitted that letter dated 30.1.1980 at exh. 245 clearly showed that there was no default on the part of the plaintiff.

5.9 As regards third working season it started from 15.11.1978 till 14.6.1979. The cement was supplied on 21.12.1978 and onwards upto 31.5.1979 and thereafter no cement was supplied in the said working season. Supply of cement prior to handing over of the site does not prove that the work is started and there is no evidence from the appellant's side that the work started from 20.12.1978. Whereas, looking to the plaintiff's evidence at Exh. 43 (page 85 of the paper book of the appellant), it clearly established that the site was handed over on 15.3.1979 which evidence is not contradicted nor disproved. Now if cement is supplied and site is not handed over then the cement cannot be used but the cement available and supplied by the department will be stored by the plaintiff so that on handing over of the site the work of lining can be immediately carried out. Thus the supply of earlier cement was not served any useful purpose.

5.10 It was submitted that in spite of odds and heavy rise in prices at the cost of no profit the contractor has completed the work and therefore the contention of the defendant/appellant has to be rejected.

5.11 Regarding RA bill, the learned counsel for the plaintiff has relied on Clause 8 of the Contract at Exh. 234. It was submitted that as per Clause 8 all such intermediate payment shall be regarded as payment by way of advance against the final payment only and not as payment for work actually done and completed and shall not preclude the Engineer-in-charge from requiring bad, unsound, imperfect or unskillful work to be removed or taken away and are constructed or erected nor shall any such time be considered as a payment admission of the due performance of the contract or any part thereof in any respect or accruing of any claim nor shall be concluded determined or effect in any way power of the Engineer-in-charge as to final statement and adjustment

of the account or otherwise or in any other way very or effect the contract. In view of the same he submitted that acceptance of RA bills has no relevance in this behalf.

5.12 As regards Ukai formula it was submitted that the said formula was for the payment of the rise in prices of labour and petroleum and in principle was accepted by the Government. Thus it is applicable.

5.13 So far as the books of accounts are concerned, it was submitted that the books of accounts were kept as required in the regular course of business and even the claim is established on the basis of Section 73 of the Indian Contract Act and on which, detailed reasoning is given by the trial court.

5.14 As regards interest the learned counsel for the plaintiff has submitted that looking to the evidence at Exh. 43, para 25 (page 119 of the paper book of the appellant) wherein witness has mentioned that for the ad hoc advance given by the appellant they have charged 15% interest and deducted from the bill. Thus, in fact, the trial court on the basis of the same, should have awarded 15% interest whereas interest awarded is 12% only. The principle of reasonability applied by the Hon'ble Supreme Court in the case of THE MANAGING DIRECTOR, J & K HANDICRAFTS VS. M/S. GOOD LUCK CARPETS reported in AIR 1990 SC 864 which clearly laid down in para 6 as under:-

"para 6. This however, does not take away the jurisdiction of the Court to allow interest from the date on which the award is made rule of the Court. In the instant case this date is 28th May, 1987. We are of the opinion that it is a fit case where the respondent may be allowed interest on the amount of rupees 95,997.60 ps. from the said date. Coming to the question of the rate of interest the agreement between the parties contemplates payment of interest to the appellant by the respondent in a certain contingency at the rate of 18% per annum. The said rate, in our opinion, can be taken as a reasonable basis for fixing the rate on which interest is to be awarded to the respondent for the simple reason that even the appellant considered that rate to be reasonable for recovery from the respondent".

5.15 However, the learned counsel for the plaintiff has stated that he supports the finding of the learned

trial judge to that extent. The plaintiff has filed Cross Objection before this court in which the plaintiff has stated that the claimed interest from the date of written demand of the suit claim vide letter Exh. 262 wherein interest has been claimed from the due date i.e. 5.3.1982. The plaintiff has claimed interest from due date and even in notice under section 80 which is at Exh. 57 wherein also the plaintiff has claimed interest from the due date i.e. from 5.3.1982 and therefore the plaintiff is entitled for interest from the date demanded in the notice and on construing due date, date will be 20.6.1980 when the work was completed. He has relied on the judgement of the Hon'ble Supreme Court in the case of B.V. RADHA KRISHNA VS. SPONGE IRON INDIA LTD. reported in AIR 1997 SC 1324 in which at paragraphs 15, 16 and 17 the Hon'ble Supreme Court has observed as follows:

5.15A "Para 15 - Learned counsel for the appellant also submitted that the High Court went wrong in awarding interest only from 14.6.1984, on the ground that the notice demanding the amount was issued on that date only and, therefore, the appellant was not entitled to any interest prior to that date. According to the learned counsel, Section 3(1)(b) of the Interest Act, 1978, in unequivocal terms specifies that interest would be available from the date mentioned in the demand notice and without noticing that provision the High Court has wrongly given interest from the date of the notice.

5.15B Para 16. - On the question of interest we think the learned counsel for the appellant is right in placing reliance on Section 3(1)(b) of the Interest Act. The appellant-Company (sic) had issued notice on 14.6.1984, demanding payment of the specified amount and interest on that specified amount at the rate of 21% per annum from 1.4.1983 till payment. Section 3(1)(b) of the Interest Act, 1978, reads as follows:

"3. Power of Court to allow interest (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of

interest, for the whole or part of the following period, that is to say,

(a).....

(b) If the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed to the date of institution of the proceedings".

5.15C 17. In view of this, the learned counsel appearing for the respondent company could not support the order of the High Court in awarding interest from the date of notice, namely 14.6.1984 and not from the date mentioned in the notice viz. 1.4.1983."

5.16 As regards limitation, the learned counsel for the plaintiff has submitted that this contention which was not raised in the trial court is a mixed question of facts and law and the same cannot now be adjudicated. He further submitted that the suit is based on breaches committed by the appellant i.e. successive breaches. Hence the suit is required to be filed from the last breach committed and not based on each cause of action. Even otherwise the suit is to be filed from the date of return of security deposit, which deposit was released on 27.1.1982 i.e. last payment of work done. The suit has been filed on 25.1.1985 i.e. within the period of three years from the last payment.

5.16A The learned counsel for the respondent has also relied on the judgement of this Court in Civil Revision Application No. 1201 of 1971 in the case of M/s. VIRCHAND SANKALCHAND & CO. VS. OIL AND NATURAL GAS COMMISSION decided on 25.3.1974 (Coram: P.D. Desai, J (as he was then)) in which on pages 6 to 8 the Court has observed thus:

"How, out of this amount which was kept back as security deposit, a sum of Rs. 10636.08 was paid to the petitioner on November 18, 1965. This payment is evidenced by a document styles as "hand receipt" which is at Exh. 122. This document shows that the payment of the aforesaid sum was made on account of refund of security deposit recovered from the bills payable to the petitioner for the work done by it under the

contract. There is a further endorsement in the said document to the effect that nothing was outstanding against the petitioner on any account and that no defect was found during the maintenance period. It would thus appear that a part of the amount which was payable to the petitioner for the work done by it under the contract and which was held back as security deposit was paid to it on November 15, 1965, that is, within the period of three years from the date of the last payment made under the final bill on March 31, 1965. This payment, in my opinion, was a payment on account of a debt inasmuch as it was the amount which was payable to the petitioner by the opponent for the work done by the former for the latter. There was a subsisting liability on the opponent to make payment of this amount to the petitioner and the liability was relatable to the work done by the petitioner for the opponent. A fresh period of limitation would, therefore, commence from the date on which the last payment was made and if the period of limitation is computed from that date the present suit is clearly within time. In view of these peculiar facts and circumstances of the case, therefore, in my opinion, the suit for recovery of the amount of penalty wrongly deducted from the payments which were due to be made to the petitioner for the work done under the contract is clearly within time."

Again on page 9 the court further observed as under:

"In my opinion, therefore, the payment of the amount on November 18, 1965 did not constitute merely the return of the security deposit but amount also to the final payment of the amount which was due to the petitioner from the opponent for the work done by the former for the latter. In this view of the matter the argument advanced on behalf of the petitioner must be rejected."

5.16B He has also relied on the judgement of this Court in the case of STATE OF GUJARAT VS. HASMUKH CONSTRUCTION CO. in F.A. No. 4421 of 2001 decided on 28.9.2001 (Coram: Y.B. Bhatt and H.H. Mehta, JJ) particularly paragraph 6 which reads as follows:

"It was sought to be contended by learned counsel for the appellant that the suit was barred by

limitation. We find that this contention was taken by the defendant-appellant in the written statement, though in a very tense manner. However, we find that no issue as to limitation was raised by the trial Court. In the premises aforesaid, this contention, even if it is possible to urge for the first time in appeal, would be of no assistance to the appellant-defendant inasmuch as limitation is a mixed question of fact and law. Admittedly, no facts in the context of the contention as to limitation have been brought on record by the appellant-defendant, on the basis of which this question could be examined by us in greater detail. However, it was sought to be urged that the final bill was paid by the appellant-defendant to the plaintiff on 29th March, 1984, and since the suit was filed on 4th January, 1988, the suit must be deemed to have been filed beyond the period of limitation. However, what requires to be noted is that in such a case, limitation would begin to run from the date when the claim made by the plaintiff against the defendant is rejected or refused by the defendant. Merely the payment of final bill would not operate so as to commence the period of limitation particularly when it is neither asserted nor proved by the appellant-defendant that payment in respect of the said final bill was accepted by the plaintiff without protest and/or by way of full and final settlement of all his claims. It also requires to be noted that Order 8 Rule 2 of CPC requires a party to plead specific facts in support of his contentions particularly in respect of limitation, and this would include all facts necessary establishing such contentions. As aforesaid, the appellant-defendant has not pleaded any facts on the basis of which this contention could possibly be upheld."

CONCLUSIONS:

6. We have considered the correspondence ensued between the plaintiff and the defendant. We have also considered the oral evidence led on behalf of the plaintiff Mr. Praful Manubhai Gandhi at Exh. 43 and oral evidence on behalf of the defendant Mr. Mahendrasinh Fulsinh Solanki at Exh. 274 and the submissions made by the learned counsel for the plaintiff as well as the learned counsel for the defendant. We

have also gone through the judgement and decree of the learned trial court. In our view normally the working day of the first season starts from 15.11.1976 to 14.6.1977. Therefore, ordinarily the site would be working for 213 days. However, from the oral and documentary evidence on record it appears that the site was handed over on 15.1.197 and cement was issued for the first time on 31.1.1977. In view of the same the contractor could be able to work only 135 days. As against 213 days, there was a loss of 78 days for the first season. As regards second season, it starts from 15.11.1977 to 23.3.1978. In this case the site was handed over on 15.3.1978 i.e. just couple of days before second season was to end on 23.3.1978 and since water was flowing which took 15 days to dry, it became clear that there was not a single day available for working in this season. As regards second part of second season i.e. 24.3.1978 to 14.6.1978, this period after extension in the contract period was granted, the plaintiff may be able to work 80 days. However, from the evidence on record, the Department has only provided 4.5 M.T. of cement both unextended and extended period which was less than a day's requirement. It would thus become clear that for the second season, before and after extension, no work could be done on account of late handing over of the site and non-availability of cement, without any contributory default on the part of the plaintiff. For coming to this conclusion we have exh. 260 which is a letter dated 17.3.1978 confirming the fact of sending telegram by the plaintiff to the Executive Engineer that the work was stopped for want of cement and also letter dated 2.7.1979 at Exh. 242 and another letter dated 13.3.1978 at Exh. 259.

6.1 As regards third season it started from 15.11.1978 to 14.6.1979. However, in this case the site was handed over on 15.3.1979 and after drying period, work commenced on 31.3.1979 and 76 working days were available in the said season. Therefore, there was no contributory default on the part of the plaintiff for late working. It may be noted that during this season the defendant made available 653 M.T. of cement which could be consumed in 129 days if the plaintiff were to take 5.076 M.T. per day. However, the plaintiff consumed the said cement within 76 days, putting up that much extra volume of work.

6.2 As regards fourth season, it began from 15.11.1979 to 29.6.1980. Here also the site was handed over on 15.3.1980 instead of 15.11.1979 i.e. almost after making allowance for drying period, the work

started on 1.4.1980. Thus the delay has occurred because of late handing over of the site and there was no contributory default on the part of the plaintiff.

6.3 From these facts it may be noted that it is clear that 342 working days would have been available if one is to consider the contract period if the site and cement were made available in time. However, in spite of delay in handing over the site and cement and non-availability of cement, the work was completed by the plaintiff in 288 working days which clearly proved the fact that there was no laxity on the part of the plaintiff and on the contrary time less than what the plaintiff was entitled to, was utilised for by the plaintiff to the satisfaction of the defendant/appellant.

6.4 The above facts which are based on oral evidence of the plaintiff as well as the defendant duly supported by documentary evidence in the form of correspondence have been taken into account and appreciated by the learned trial judge in favour of the plaintiff. The learned trial judge has held in favour of the plaintiff to the effect that the plaintiff has not committed breach of terms and conditions of the contract and solely on account of defendant's reason only, the work in question was delayed and the work was required to be executed in prolonged period from 24.3.1978 to 20.6.1980.

6.5 The learned counsel for the appellant has relied on Section 55 of the Contract Act which provides effect of failure to perform at a fixed time, in contract in which time is essential. The learned counsel submitted where parties to the contract promise to do a certain thing at or before a specified time or certain things at or before a specified time and fail to do such thing at or before a specified time, the contract, or so much of it as has not been performed becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

6.6 If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promise is entitled to compensation from the promisor for any loss occasioned to him by such failure. He has also relied on the judgement of the Hon'ble Supreme Court in the case of M/S. A.T. BRIJ PAUL SINGH AND BROS. VS. STATE OF GUJARAT reported in AIR 1984 SC 1703 where the Hon'ble Supreme Court has held in para 9 at page No. 1706 thus:

"It was not disputed before us that where in a works contract, the party entrusting the work commits breach of the contract, the contractor would be entitled to claim damages for loss of profit which he expected to earn by undertaking the works contract. What must be the measure of profit and what proof should be tendered to sustain the claim are different matters. But the claim under this head is certainly admissible."

6.7 On the basis of the said judgement he stated there is a breach committed by the defendant and therefore the plaintiff has to incur extra expenses. The plaintiff is therefore entitled to extra charges. In view of the same the plaintiff is required to be compensated for the loss suffered by them during the prolonged period. As the amount claimed by the plaintiff remained uncontroverted, the plaintiff is entitled for a sum of Rs. 1,99,681.08 ps.

6.7A Principle of damages - Section 73 of the Indian Contract and Specific Relief Acts provides compensation for loss or damage caused by breach of contract. Section 73 reads as under:

"When a contract has been broken, the party who suffers by such breach is entitled to receive , from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract - When an obligation resembling those created by the contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contarcted to discharge it and had broken his contract."

6.7A(i) Under Section 73, when a contract has been broken, the party who suffers by such breach

is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breachof it. This Section is to be read with Section 74, which deals with penalty stipulated in the contract, inter alia, (relevant for the present case) provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from theparty who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation."

(Re: OIL AND NATURAL GAS CORPN. LTD. VS. SAW PIPES LTD. 2003 AIR SCW 3041 at page 3073)

6.7B This section i.e. Section 73 of the Act is declaratory of the Common Law as to damages. The law imposes an obligation or implies the terms that upon breach of a contract, damages must be paid; that is also provided in plain terms by the section. The section applies only where a contract has been broken; and breach of contract must be proved before setting about the question of damages. No damages can be awarded by the Court without coming to any conclusion about breach, merely on the ground that there was a breach of contract.

6.7C It is essential that a person who claims damages for breach of a contract should have performed or was ready to perform his part of the obligations arising under the Contract. It is the fundamental principle of damages for breach of contract that these are awarded to place the injured party in the same position in which he would have been, had he not sustained the injury of which he complains. Hence the damages must be commensurate with the injury sustained. "Damage" may be defined as the disadvantage which is suffered by a person as a result of the act or default of another. Damages are compensation for natural and probable consequence of the breach i.e. which could reasonably be foreseen. As a function of damages is compensatory and not retributive, this principle is applicable to torts as well as contracts.

6.7D Kinds of damages - General and Special damages In relation to liability, general damages are those which arise naturally and in the normal course of events; whereas special damages are those which do not arise naturally out of the defendant's breach and are recoverable only where they were in the reasonable contemplation of the parties at the time they made the contract.

6.7E In relation to pleadings, general damages are those which will be presumed to be the natural or probable consequence of the wrong complained of, with the result that the plaintiff is required only to assert that such damage has been suffered, whereas special damages refers to those losses which must be specifically pleaded and proved.

6.7F There are many authorities which establish that substantial damages can be claimed where a breach is proved even though the calculation of damages is "not only difficult but incapable of being carried out with certainty or precision. Damages on account of loss of profit cannot be said to arise in the usual course of things; and can be claimed only where the circumstances, viz. about loss of business, are made known to the defendant or are within the contemplation of parties.
The question of ascertaining the quantum of damages does not involve any question of legal recoverability, but merely of the assessment or calculation in terms of money or the non-pecuniary (viz. injury to reputation, mental pain and suffering) or pecuniary damage (loss of profit, cost of replacement etc.).
(Re: Pollock & Mulla - Indian Contact and Specific Relief Acts, 12th Edition, Vol. 2 pages 1457 and 1548)

6.7F(i) The first paragraph of the Section (section 73 of the Act) deals with compensatio for loss or damage cuased by breach of contract.....The third paragraph adverts to compensation for failure to discharge obligation resembling those created by contract. The explanation points to the need for considering the means which existed of remedying the inconvenience while estimating damages. The illustrations (a) to (r) portray the general rules that have to be followed in applying this section to the facts of a given case.

The first paragraph posits:
(i) where a contract is broken;
(ii) the party suffering from the breach of contract is entitled to receive compensation from the party who has

broken the contract;

(iii) the compensation can be recovered for loss or damage that arose in the usual coure of things from such breach;

(iv) or which the parties knew at the time of the formation of the contract as likely to result from such breach.

6.7F(ii) The third paragraph of Section 73 explains that the principle contained in para 1 is applicable to what are called quasi-contracts i.e obligations resembling a contract. The breach of such obligation i.e. the failure to carry out such obligation is actionable in damages as if the obligation was a contract and there has been a breach thereof. (Re: Law of Contract in India by V.G. Ramachandran page 1704)

6.7F(iii) Nature of contractor's right to damages due to the employer's default -

"If the employer himself prevents performance, or unreasonably delays to perform his obligations (e.g. to provide the site at the stipulated date), or delays the supply of necessary drawings, information, or materials, he is liable in damages to the contractor for any extra cost resulting to the later from these causes. The contractor must be able to prove, however, before he can recover, that the employer is under an express or implied obligation to perform the act by omission of which he has suffered loss."

(Re:G.T. Gajria's Law relating to Building and Engineering Contracts in India, 4th Edition, page 848)

6.7G As regards fixed overheads and the Hudson and Eichleay formulae, the following principles are emerged from Hudson's Building and Engineering Contracts, 1995 Edition, para 8.182, page 1076 thus:

"These two formulae have been examined and compared in extenso in C.C.P.P. As stated supra, the object of these formulae is to produce a reasoned estimate of the sort of profit and fixed overhead recovery combined which a delayed contract organisation, viewed as a profit earning entity, might be expected to earn in the market had it been free to demobilise and leave the project on time. The Hudson formula, first put forward in the tenth edition in 1970, at a time

of high production and inflation world-wide, was relatively simple, and was as follows:

$$\text{H.O./Profit percentage} \over 100 \times \text{Contract sum} \over \text{Contract period (e.g. in weeks)} \times \text{period of delay}$$

6.7-H According to Halsbury's Laws of England, 4th Edition, on page 412, para 1102, the term "damage" and "damages" has been defined. "Damage" may be defined as the disadvantage which is suffered by a person as a result of the act or default of another. "Damages" are the pecuniary recompense given by process of law to a person for the actionable wrong that another has done him.

6.7-I Assessment of damages - Paragraph 1200 - on page 484 - General Principles- The award of damages is in the form of a sum of money which is to be a once and for all payment of compensation. In many cases the court should itemise the damages awarded. This is particularly so in personal injury cases where different elements of the award carry different rights to interest.

LIMITATION:

6.7J We have also considered the question of limitation in this behalf and in this case we have relied on the Division Bench judgement as well as judgement of Justice P.D. Desai. So far as Ukai formula was concerned, the same was applicable for the payment of the rise is prices of labour and petroleum and in principle was accepted by the Government and therefore the learned Judge was right in accepting the said formula. We have also considered that the books of accounts were kept as required in the regular course of business and even the claim is established on the basis of Section 73 of the Indian Contract Act and on which detailed reasoning is given by the Trial Court. We fully agree with the same. As regards limitation, the defendant had taken the contention which was not raised before the Trial Court and the point of limitation being a mix question of facts and law cannot now be adjudicated. However, even if the same can be adjudicated, we have relied on the judgements of the Division Bench of this Court in the case of STATE OF GUJARAT VS. HASMUKH CONSTRUCTION CO. (supra) and GUJARAT HOUSING BOARD VS. HARILAL JETHALAL (supra) and judgement of single Judge (Coram: P.D. Desai, J (as he

was then)) in the case of VIRCHAND SAKALCHAND & CO. VS. OIL & NATURAL GAS COMMISSION (supra) and the present suit is based on breaches committed by the appellant i.e. successive breaches and the suit is filed from the last breach committed and not based on each cause of action. Even otherwise the suit is filed from the date of return of security deposit which deposit was released on 27.1.1982 i.e. last payment of work done. The suit has been filed on 25.1.1985 i.e. within the period of three years from the last payment. Therefore, the suit is only within the period of limitation.

6.8 In view of the above finding, we consider the claim of the plaintiff as under:

Claim No. 1: The plaintiff has claimed Rs. 1,99,681.08 ps. on account of price escalation in labour due to prolongation of work. In view of our discussion which we made earlier, it is clear that the plaintiff was required to complete the work within 18 months i.e. on or before 23.3.1978 but the delayed work was actually completed on 20.6.1980. Thus, there was a delay of 27 months and the delayed performance was solely on account of defendant's reasons. Therefore, the plaintiff had to incur extra cost by paying extra wages than that contemplated in the contract, to the labourers and for the same, the plaintiff proved his case by leading oral evidence, Ukai formula at exh. 63 and labour journal at exh. 270.

6.9 As regards claim No. 2, the plaintiff has claimed amount of Rs. 43,712.80 ps. on account of price escalation on lubricants etc. due to prolongation of the work. In view of the oral and documentary evidence the plaintiff has been able to prove the claim and therefore the plaintiff is entitled to Rs. 43,712.80 ps.

6.10 As regards claim No. 3, the plaintiff has claimed amount of Rs. 4,68,750/- on account of overstay of capital and machinery. According to the plaintiff they had brought the machinery for execution of the abovesaid work and accordingly if the work would not have been delayed then the machinery brought by them would have been utilised fully within the period of 18 months i.e. the stipulated period but due to the departmental delay, the work has been delayed for a period of 27 months i.e. over and above the stipulated time period and therefore due to prolongation of the work, machinery which were brought by the plaintiff for execution of the said work could not be utilised and hence the plaintiff

has suffered loss. The plaintiff has relied on the statement "C" which is appended with the plaint. He has stated that capital and machinery worth Rs. 7 lakhs was brought for a period from 23.3.1978 to 20.6.1980 and machinery worth Rs. 8 lakhs was brought for a period from 8.2.1979 to 20.6.1980. Therefore, there was a delay of 27 months and if we calculate interest at the rate of 18% per annum at Rs. 7 lakhs from 23.3.1978 to 20.6.1980 it would come to Rs. 2,72,950/- and interest on Rs. 8 lakhs from 8.2.1979 to 20.6.1980 interest would come to Rs. 1,96,800/- in all Rs. 4,68,750/-. In our view there was a delay on the part of the Government and there is no default on the part of the plaintiff. The plaintiff is, therefore, entitled to the said amount of Rs. 4,68,750/-.

6.11 As regards claim No. 4, the plaintiff has claimed amount of Rs. 4,64,868.72 ps. on account of overhead charges. He has stated that there was a delay of 27 months and he has considered overhead charges of 18 months. As per final bill the amount comes to Rs. 32,30,747.96 ps. On account of that he has claimed Rs. 4,64,868.72 ps. He has also relied on the Committee Report which is produced at Exh. 53. He has also relied on standard formula in Hudson's Building and Engineering Contract, page 598-599 and Gujaria in Building and Engineering Contracts, page 633. In view of the same, the plaintiff is entitled to Rs. 4,64,868.72 ps.

6.12 As regards claim No. 5, the plaintiff has claimed amount of Rs. 73,695/- on account of interest on security deposit, final bill, bank commission charges etc. The learned counsel for the plaintiff stated that due to prolongation of the work and due to releasing of a security deposit, final bill and illegal withholding of the bank guarantee and due to prolongation of the work, the plaintiff has to incur extra expenditure, losses damages towards interest loss and extra interest charges paid to the department on mobilisation advances and for which the plaintiff has given calculation at statement "E" along the plaint. In the said statement he has stated that in this case the work was completed on 20.6.1980. Final bill was paid on 1.1.1982 and hence there is a delay in payment of 11 months. He therefore claimed interest at 18% on the final bill. As regards interest at the rate of 18% on security deposit of Rs. 1,18,074/-, he has stated that the work was completed on 28.6.1980. Security deposit was paid on 27.1.1982. Hence there was a delay of 19 months. Therefore, the plaintiff is entitled to a sum of Rs. 34,05.30 ps. The plaintiff has also calculated interest on the

mobilisation advance. So the plaintiff is entitled to the said amount.

6.13 As regards claim No. 6, the plaintiff has claimed Rs. 1,625/- on account of wrongful recovery towards penalty, the plaintiff has led sufficient evidence in this regard. The plaintiff is therefore entitled to the same.

6.14 As regards claim No. 7, the plaintiff has claimed amount of Rs. 61,168/- on account of excess quantities above tender. The learned trial judge has not granted the claim and the plaintiff has not filed appeal against the same. So we are not dealing with the same.

6.15 As regards claim No. 8, the plaintiff has claimed amount of Rs. 39,798.75 ps. on account of wrongful deduction of the quantity from item No. 2. According to the plaintiff the terms and conditions of the contrast, there is an item No. 2 in Schedule B of the Tender which pertains to earth work in banking and according to the tender specification the embankment earth quantities were to e brought from the borrow-pit area and if available from item No. 2. In the present case, the department has deducted the quantity of the work executed by the plaintiff in item No. 5 inasmuch as item No. 5 pertains to excavation and filling of scoured bed borrow -pit from excavated earth, but the plaintiff has executed the item No. 5 and done the work of embankment etc. The plaintiff has relied on measurement book at exh. 237 and work actually done. We therefore agree with the learned trial judge in granting Rs. 25,045.40 ps. on account of wrongful deduction of the quantity from item No. 2.

6.16 As regards claim No. 9, the plaintiff has claimed amount of Rs. 1,22,490/- on account of change in item No. 4 instead of brick lining. The plaintiff has stated that the tender rate for the brick lining was Rs. 18.76 per sq. mt. Rate as per Government estimate Rs. 26.07 per sq. mt. Therefore the difference of rate is Rs. 7.31 per sq.mt. Total quantity of work done in cement concrete lining 16756.62 sq.mt. Amount to be recovered worked out to Rs. 1,22,490.00 (16756.62 sq.mt. x 7.31). According to the plaintiff as per the terms and conditions of the contract, they were to provide brick lining but due to delay in the work in the year 1980, there was shortage of coal and also the department was insisting to get the said work executed within the said working season and therefore to get the work executed earlier, the department called upon the plaintiff to

complete the work with cement, concrete lining 10 c.m. thick and wherever possible the work was to be completed by providing brick lining and accordingly, the plaintiff had proceeded with the work of concrete lining which was non-tendred item and therefore the same was an extra item not contemplated within the terms and conditions of the contract. The said work was carried out by the plaintiff reluctantly and under pressure from the department and the plaintiff has not been paid the concrete rate. Therefore, the plaintiff is entitled to the said amount as calculated above. The plaintiff has led necessary evidence in this behalf and in our view the learned judge has rightly awarded the amount in view of Section 70 of the Contract Act as the contractor has done the work. Admittedly, the plaintiff is not reimbursed for the said work by the Government.

6.17 As regards claim No. 10, the plaintiff has claimed Rs. 12,351.75 ps. on account of reduced rate in Schedule B item. He has stated that on account of reduced rate of item No. 4 the claim tender was Rs. 18.76 per s.m. However, they were paid less , the details of which are as under:-

Quantity	Tender rate/s.m.	Rate paid/s.m.	Difference /s.m.	Amount Rs.
6667.67	18.76	18.04	0.72	4800.75
2914.83	18.76	18.04	0.72	2098.67
7174.12	18.76	18.00	0.76	5452.33
				12351.75

Total of Rs. 12,351.75 is paid less.

6.18 In view of the same the plaintiff has claimed the said amount and produced necessary documentary evidence. He has relied on the Contract, clause 8 at Exh. 234, page 18 wherein the plaintiff intimated to the department firstly rectifying the same . In view of the same the plaintiff is entitled to the same.

6.19 As regards claim No. 11 amounting to Rs. 11,417.20 ps. on account of wrongful recovery and difference in rate actually deducted in Schedule - A. As there was a delay in work and the said is on account of defendant's reason. Therefore, the plaintiff is entitled for the said amount.

6.20 As regards claim No. 12, the plaintiff has claimed Rs. 11,632.30 ps. on account of wrongful recovery of additional cement bags. According to the

plaintiff the department has called upon the plaintiff to carry out the work of cement concrete lining and due to the said change the plaintiff has consumed additional cement bags. The plaintiff has consumed 28.10 cement bags per 100 s.m. in brick lining. Cement consumed in cement concrete lining is 32.00 bags per 100 s.m. Additional cement consumption in cement concrete lining comes to 2.90 bags per 100 s.m. Work executed in c.c. lining is 16756.62 s.m. Additional cement bags consumed in c.c. lining is 653.50 bags i.e. 32.675 M.T. Therefore total amount to be recovered on account of additional cement bags consumed is Rs. 11,632.30 ps. The plaintiff has produced necessary documentary evidence and hence the plaintiff is entitled to the said amount.

6.21 As regards claim No. 13, the plaintiff has claimed Rs. 12,46,702/- on account of interest on the claims Nos. 1 to 12. The total additional amount is Rs. 13,61,574.20 ps. The plaintiff has claimed interest from 7.8.1983 to 25.11.1985. The learned trial judge has granted interest at the rate of 12% per annum from 7.8.1983 to 25.11.1985. For claiming the said amount the plaintiff has stated that he has finished the work on 20.6.1980 and the suit has been filed on 25.11.1985. He has stated that final bill is paid on 1.1.1982. The plaintiff has vide letter dated 5.3.1982 called upon the defendant for making payment of all the 12 claims. The details thereof are submitted by the plaintiff on 5.3.1982 and therefore the plaintiff is entitled to interest from that date. The plaintiff has also served legal notice on 7.8.1983 on the defendant. The learned trial judge has given interest from 7.8.1983 from the date of the statutory notice till filing of the suit i.e. on 25.11.1985. In our view the learned trial judge was right in awarding interest on that amount.

6.23 In view of the judgement of the Hon'ble Supreme Court in the case of B.V. RADHA KRISHNA (supra), interest is payable from 20.6.1980 but in the Cross Objection the plaintiff has restricted the claim from 5.3.1982 to 7.8.1983. So we award interest to plaintiff only from 5.3.1982 to 7.8.1983 accordingly. So amount on the claim awarded works out to Rs. 2,32,773.19. The Cross Objection filed by the plaintiff is allowed to the above extent.

6.24 In view of the aforesaid discussion, appeal filed by the appellant State is dismissed and the Cross Objection filed by the plaintiff is allowed and the plaintiff is entitled to claim interest from 5.3.1982 to

7.8.1983 and further upto 25.11.1985 i.e. till the suit is filed. However, from 7.8.1983 to 25.11.1985 the learned judge has already given interest. Therefore, we need not grant interest for the said period. However, interest from 5.3.1982 to 7.8.1983 i.e. the date of statutory notice is granted.

(D.K. TRIVEDI, J)

(K.M. MEHTA, J)
(pkn)